

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**COMPANY PETITION No. 81 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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CHANDRIKA PRAKASH SHAH - Petitioner(s)
Versus
NARMADA FABRICS PVT. LTD. - Respondent(s)

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Appearance :

MR HARMISH K SHAH for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 14/11/2006****ORAL JUDGMENT**

Present petition has been filed by the petitioner for an appropriate order of winding up of respondent company i.e. NARMADA FABRICS PVT. LTD. under the provisions of the Companies Act, 1956.

2. It is submitted on behalf of the petitioner that the petitioner supplied to the respondent company dyes and chemicals required for dyeing and processing textile products for an aggregate amount of Rs.6,26,599/- during the period from 4-2-2003 to 11-4-2003 and the said goods were accepted and utilized by the respondent company. It is also further submitted that in spite of the repeated requests and demands, the aforesaid amount has not been paid and therefore, the statutory notice, required under sections 433 and 434 of the Companies Act, 1956 dated 10-2-2006 was sent to the respondent company. However, the same was returned with an endorsement "factory closed". It is submitted that the company is unable to pay its debts arising in the normal and ordinary course of business and has lost its substratum and therefore, the respondent company is required to be ordered to be wound up.

3. This Court initially issued the notice upon the respondent company by order dated 9-6-2006 making it returnable on 12-7-2006. Thereafter, a fresh notice was issued pursuant to the order dated 2-8-2006 and Direct Service was permitted with a liberty to affix the same at the address of the respondent shown in the cause title of

the petition. That an affidavit was filed with regard to the same and in spite of that, nobody appeared on behalf of the respondent company and therefore, by order dated 19-9-2006, this Court admitted present company petition and the date for final hearing was directed to be advertised in two local newspapers and final hearing was fixed on 1st November 2006. That pursuant to the order passed by this Court dated 19-9-2006, the admission and the date of final hearing were published in the local newspapers i.e. "Indian Express" (English) and Gujarat Mitra (Gujarati) on 10-10-2006 and the affidavit of publication has been filed which is on record. In spite of the above, nobody has appeared on behalf of the respondent company opposing the present petition. No objections have been received by this Court opposing the company petition. After the publication of admission of the present company petition, neither the dues of the petitioner are paid nor any reply has been filed opposing the petition and/or disputing the claim of the petitioner. Neither payment is made nor the company has come out with any concrete proposal. It is also not pointed out that the respondent company is financially sound and that is in a position to do day-to-day affairs. In fact, it appears that the respondent company is closed. Considering the above, it appears that the

respondent company has lost its substratum and is unable to pay the debts to the petitioner as well as secured creditors. Under the circumstances, the respondent company is required to be ordered to be wound up.

4. For the reasons as stated above, the petition is allowed. The respondent company is directed to be wound up. The Official Liquidator attached with this Court is appointed as Official Liquidator for the respondent company. The Official Liquidator is hereby asked to take possession of the property (movable and immovable) of the respondent company along with its bank accounts, cash and accounts books etc. The Official Liquidator shall submit his report within a period of three months. If required, he can take services of the Official Valuer for the purpose of preparation of possession note etc. No costs.

5. The petition is accordingly disposed of.

(M.R.SHAH, J.)

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